Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1995

Ms. Sharon Y. Lowe
Staff Attorney
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR95-228

Dear Ms. Lowe:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32016.

The General Services Commission (the "commission") received a request for information concerning the LoanSTAR program, which is a loan program to finance energy conservation retrofit programs in public sector institutions. 1 T.A.C. § 5.401. You indicate that you have supplied all of the information requested except for documents responsive to one category of the request:

> any internal and interagency correspondence, memos or documentation of changes in the administration or application of the LoanSTAR Program since its inception. Please include correspondence or direction to the [commission] from the governor's office regarding policy and disbursement of funds.

You contend these documents are excepted from disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code.

You indicate that pursuant to interagency contract, the commission provides administrative oversight for the programs of the energy office. *See* Gov't Code § 771.003 (Interagency Cooperation Act). The energy office, which has statutory authority to implement or assist in implementing energy efficiency projects at state agencies, *id.* § 447.008; *see also id.* § 2305.041 (concerning state energy conservation program), is a division of the Office of the Governor. The Texas LoanSTAR program is a program of the energy office. 1 T.A.C. § 5.

Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5.[1] The documents at issue are inter- or intra-agency communications concerning the LoanSTAR program. In Open Records Decision No. 615 (1993), this office determined that in order to be excepted from disclosure, the advice, opinion, and recommendations at issue must be related to policymaking processes of the governmental body rather than to routine personnel or administrative matters. *See Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) (court addressed proper scope and interpretation of § 552.111). Also, even when an inter- or intra-agency memorandum relates to a governmental body's policymaking functions, section 552.111 excepts from disclosure only advice, opinions, and recommendations, not purely factual information. Open Records Decision No. 615 (1993).

You contend that a number of the documents are draft documents, but that final versions were made available to the requestor. Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. *Id.; see also* Open Records Decision No. 559 (1990). We have reviewed the documents at issue and conclude that those documents that are actually preliminary draft documents may be withheld from disclosure. However, some of the documents submitted to this office appear to be final versions rather than preliminary versions of documents, which may not be withheld from disclosure as draft documents. We marked portions of what we assumed were final versions of documents to indicate what sections are protected under section 552.111.[2]

You also assert that section 552.107(1) is applicable to the requested correspondence between the commission and the governor's office regarding policy and disbursement of funds because "all administrative actions, including loan approvals and awards of grants by the LoanSTAR program and/or the Energy Conservation Office, have and continue to be subject to legal advice from and approval by the Governor's legal office." However, a governmental body generally may withhold under section
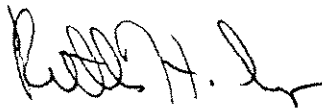
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[1]This office previously held that section 552.111 was applicable to advice, opinion and recommendations used in decision-making processes within an agency or between agencies. Open Records Decisions No. 574 (1990) at 1-2, 565 (1990) at 9. However, in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the court addressed the proper scope and interpretation of this section. In light of that decision, this office reexamined its past rulings. In Open Records Decision No. 615 (1993), we determined that in order to be excepted from disclosure, the advice, opinion and recommendations must be related to policymaking functions of the governmental body rather than to decision-making concerning routine personnel and administrative matters.

[2]Some of the documents were not marked to show any exceptions, but appeared to be preliminary drafts.

552.107(1) only information revealing client confidences or containing legal advice, opinion, and recommendations. Open Records Decision No. 574 (1990). Our review of the documents to which section 552.107(1) appears applicable indicates that the information at issue is already excepted from disclosure under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.:   ID# 32106

Enclosures: Marked documents

cc: Ms. Andrea Barnett
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